IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 16 OF 2006

Hitaxi Madiyar .. Petitioner

versus

Manish Pratapbhai Madiyar .. Respondent

...

Mr.R.D.Soni i/b M/s.Ram & Co. for the petitioner.

Mr.R.T. Parekh for the respondent.

CORAM : D.G. KARNIK, J

DATED : 4th September 2006

P.C.:

1. Heard learned counsel for the parties. By consent, petition is disposed of finally at the stage of admission.

2. This petition is by the wife for transfer of the matrimonial proceedings bearing No.MJ Petition No.A-1786 of 2005 filed by the respondent husband in the Family Court at Mumbai to the District

Court,Nashik.

3. The respondent husband has filed matrimonial proceedings against the petitioner in the Family Court at Mumbai. The petitioner stays at Nashik and has prayed for transfer of the said proceedings from the Family Court at Mumbai to the District Court at Nashik. In paragraph no.31(d) of the petition, the petitioner has stated that she has a minor daughter aged one year. She cannot travel from Nashik to Mumbai with the minor child. She has further stated that on account of her financial condition it is impossible for her to travel from Nashik to Mumbai on every date and to defend the matrimonial proceedings. The fact of the petitioner having a minor child is not denied in the affidavit in reply filed by the respondent.

4. The facts mentioned above clearly show that it would be extremely difficult for the petitioner wife to travel from Nashik to Mumbai to defend the matrimonial proceedings. In Sumita Singh Vs. Kumar Sanjay & Anr. reported in AIR 2002 SC 396, the Supreme Court has held that in matrimonial proceedings, the convenience of the wife should be looked into. The facts of the present case undisputedly show s that it would be very inconvenient, if not impossible, for the wife to defend

the proceedings by travelling on every date of hearing from Nashik to Mumbai along with the minor child. In the circumstances, it would be appropriate to transfer the proceedings from Mumbai to Nashik. Learned counsel for the petitioner states that there is no family court at Nashik and appropriate court to try the matrimonial proceedings is the District Court.

5. For these reasons, petition is allowed. The matrimonial proceedings bearing MJ Petition No.A-1786 of 2005 filed by the respondent against the petitioner is withdrawn from the file of the Family Court, Mumbai and is transferred to the Court of District Judge at Nashik for disposal in accordance with law.

(D.G. KARNIK, J)